

Defendants' Motion for Reconsideration asks the Court to clarify that Plaintiffs' allegations sufficiently state a claim, but will not survive summary judgment or trial if the evidence shows they are barred under *Dastar*. Specifically, Defendants seek to prevent

Plaintiffs from taking the language of 17 U.S.C. § 101 in the Order out of context to contend that the law-of-the-case doctrine prevents summary judgment.

STANDARD OF REVIEW

Motions for reconsideration are governed by NECivR 60.1(c) which states:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of (1) a showing of manifest error in the prior ruling; or (2) a showing of new facts or legal authority, neither of which could have been brought to the court's attention earlier with reasonable diligence.

Defendants filed their Motion for Reconsideration "solely to clarify the Court's discussion of *Dastar*." (Filing No. 56, at 1.) The Court has carefully reviewed its Order and the applicable law, and to the extent Defendants ask the Court to reconsider, the motion is denied. The Court stated in Filing No. 52 that the allegations in the Amended Complaint sufficiently stated that the data files were tangible rather than communicative products. The Court looked to copyright law to assist in its determination of whether data files could be tangible goods for the purpose of a motion to dismiss. Neither the Court's reasoning nor the cases interpreting *Dastar* suggest that a work avoids the preclusive effect of *Dastar* simply by being "fixed" in a tangible medium. Rather, the Court reached its decision because Plaintiffs alleged an infringement of the data files themselves, and not the concepts, ideas, sequences, and structures embodied in Plaintiffs' work. The Court finds no manifest error in this ruling, nor do Defendants cite new facts or legal authority meriting reconsideration. Accordingly,

IT IS ORDERED that the Defendants' Motion for Reconsideration (Filing No. 55) is denied.

DATED this 2nd day of November, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge